

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants : Makoto OGISO et al. Group Art Unit : 3774
Serial No : 10/569,556 Examiner: Joshua H. LEVINE
(National Stage of PCT/JP2003/10826)
I.A. Filed : August 27, 2003 Confirmation No.: 7641
For : BIOCOMPATIBLE MATERIAL STRUCTURE IMPREGNATED
WITH FINE BONE POWDER AND ITS PRODUCTION METHOD

ELECTION WITH TRAVERSE

Commissioner of Patents
U.S. Patent and Trademark Office
Customer Service Window, Mail Stop Amendment
Randolph Building
401 Dulany Street
Alexandria, VA 22314

Sir:

This is in response to the requirement for restriction under 35 U.S.C. § 121 mailed from the U.S. Patent and Trademark Office on August 27, 2009. Inasmuch as the one-month shortened statutory period for reply is set in the Office Action to expire on September 28, 2009 (September 27, 2009 being a Sunday), this response this is timely filed and a Request for Extension of Time is not necessary. However, if any additional fees are necessary to maintain the pendency of this application, the Office is authorized to charge such fee to Deposit Account No. 19-0089.

RESTRICTION REQUIREMENT

The Examiner has required restriction under 35 U.S.C. § 121 and 372 to one of the following inventions:

- I Claims 1-6, 9-11, 14-19, 22, 25, and 26, drawn to a bone powder.
- II Claims 12, 13, 23 and 24, drawn to a method for producing bone powder.

The Examiner further requires the election of one species of the following two species:

- A Fine communicating pores open to an outer surface of a porous structure;
- B Fine communicating pores open to inner walls of macro pores.

Moreover, the Examiner requires the election of one of the following two sub-species if Species A or B are elected:

- Sub-species 1: Structure porous in its entirety;
- Sub-species 2: Structure porous only at the surface layer.

ELECTION

In order to be responsive to the requirement for restriction, Applicants elect, with traverse, the invention set forth in **Group I, claims 1-6, 9-11, 14-19, 22, 25, and 26**, drawn to a bone powder. Further, Applicants elect, with traverse, the **Species A**, fine communicating pores open to an outer surface of a porous structure, and the **Sub-species 1**, structure porous in its entirety. All elected claims read on the elected Species A, i.e., claims 1-6, 9-11, 14-19, 22, 25, and 26. Moreover, at least claims 1-6, 9, 10, 14, 17-19, 22, 25 and 26 read on the elected Sub-species 1.

TRAVERSE

Notwithstanding the election of Group I, Species A, and Sub-species 1, in order to be responsive to the requirement for restriction, Applicants respectfully traverse the restriction.


Applicants note that this application is a national stage application, and therefore under unity of invention practice the Examiner must establish that the claims lack unity of invention under PCT Rule 13.1 and 37 C.F.R. 1.475. In the instant situation, the requirement is improperly silent with respect to any supporting basis in PCT Rule 1.475. Therefore, the Restriction Requirement is improper for not discussing the various sections of PCT Rule 1.475, and applying these rules to the pending claims.

Accordingly, the restriction requirement is not proper, and should be withdrawn.

In view of the foregoing, it is respectfully requested that the Examiner reconsider the requirement for restriction, and withdraw the same so as to give an examination on the merits on all of the claims pending in this application.

If there are any comments or questions, the undersigned may be contacted at the below-listed telephone number.

Respectfully submitted,
Makoto OGISO et al.



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